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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:4390 of 1995

DATED:23-03-2006

Between:

Jawaharlal Nehru Technological University Non-teaching Staff Association, rep.by its Joint Action Committee Members, Kukatpalli, Hyderabad.

..... PETITIONER

AND

Jawaharlal Nehru Technological University, rep.by its Registrar, Mahaveer Marg, Hyderabad and 22 others.

.....RESPONDENTS

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ORDER:

The Joint Action Committee, of the Non-teaching Staff Association of the Jawaharlal Nehru Technological University, is before this Court seeking to have the advertisement dated 11-05-1994 issued by the respondent herein set aside, and for a consequential direction to create a promotional channel for the technical staff of the respondent-university.

2. The petitioner, a registered body, is aggrieved by the fact that the respondent-university has not provided a channel of promotion for technical Assistants resulting in their stagnation in service and adversely affecting their morale. The technical assistants, erstwhile employees of the Government, were initially sent on deputation to the university and, consequent upon options being exercised by them, their services were absorbed in the respondent-university. By resolution dated 20-01-1993, qualifications for appointment to non-teaching posts were prescribed and consequent thereto, proceedings dated 17-02-1993 were issued. Though qualifications were prescribed for appointment to the post of Technical Assistants Grade-I, Grade-II etc., the mode of recruitment was not prescribed. Several posts of Technical Assistants were created under G.O.Ms.No.42 dated 25-02-1993. The Government issued G.O.P.No.349 dated 01-10-1993, whereby a committee was constituted, including the Registrar of the respondent-university, to examine the service rules of various categories in the universities in the state and to recommend uniform service rules for various categories in different universities including the Regional Engineering College at Warangal. While the committee was required to submit its report within six months, the grievance of the petitioner-association is that despite more than 12 years having elapsed, no service rules prescribing a channel of promotion from the post of Technical Assistant have as yet been made.

3. The respondent-university issued an advertisement on 11-05-1994 inviting applications for various posts including to 22 posts of Technical Assistants. Annexure thereto classified Technical Assistants Grade-I into nine categories. The nine categories of Technical Assistants and the qualifications prescribed for appointment to each of these categories of posts is as under:

1. Technical Assistant Gr.I (Comp.Sc.&Engg.) Rs.2600-5580 (RPS'93)	Any Degree and Diploma I Computer Applications (DCA) + two years experience in Computer Centre/Department/Institution/organization. ORDiploma in Computer Engineering from the State Board of Technical Education, A.P., Hyderabad or its Equivalent + to ears experience.
2. Technical Assistant Grade-1 (Energy) Rs.2600-5580 RPS'93)	Diploma in Electrical Engineering or Mechanical Engineering (LEE or LME) from the State Board of Technical Education, A.P., Hyderabad or its equivalent + two years experienceORITI + eight years experience in Instrumentation Techniques in a recognized Institution or organizationNote: Candidates with the knowledge of computers will be preferred.
3. Technical Assistant Grade-(Transportation) Rs.2600-5580 (RPS'93)	Diploma in Civil Engineering (LCE) from the State Board of Technical Education, A.P., Hyderabad or its equivalent + two years experience.Note: Candidates with the knowledge of computers will be preferred.
4. Technical Assistant Grade-I (Environment & Water Resources) Rs.2600-5580 (RPS'93)	Diploma in Civil Engineering (LCE) from the State Board of Technical Education, A.P., Hyderabad or its equivalent + two years experience.Note: Candidates with the knowledge of computers will be preferred.
5. Technical Assistant Gr.I (Bio-Technology) Rs.2600-5580 (RPS'93)	M.Sc. (Microbiology/BioTechnology/Genetics/Bio-chemistry/Botany/Zoology + one year experienceORB.Sc. Degree (Biology) + one year technical training course sponsored by Department of Bio-technology, Government of India + two years experienceORB.Sc. Degree(Biology) + one year Diploma in Fermentation Technology + two years experience.Note: Candidates with the knowledge of computers will be preferred.

6. Technical Assistant Gr.I (Chemical Engg.) Rs.2600-5580 (RPS'93)	Diploma in Chemical Engineering/Mechanical Engineering from the State Board of Technical Education, A.P., Hyderabad or its equivalent with a practical experience of two years in the Chemical Engineering/Mechanical Engineering Laboratory of an Engineering College/Institution.ORI.T.I. in Chemical Engineering/Mechanical Engineering or its equivalent with a minimum practical experience of eight years in the Chemical Engineering/Mechanical Engineering Laboratory of an Engineering College/Institution.Note: Candidates with the knowledge of computers will be preferred.

7. Technical Assistant Gr.I (Civil, Mechanical, Electrical, E& CE Metallurgy & Printing Technology) Rs.2600-5580 (RPS' 93)	a. General Educational qualifications A pass in SSC or its equivalent b. Technical qualifications A pass in Diploma in the subject concerned from the State Board of Technical Education, A.P., Hyderabad or its equivalent with a practical experience of at least two years in the concerned Lab. Of an Engineering College/Institution.ORA pass in ITI in subject concerned conducted by the Director of Employment and Training, A.P., Hyderabad or its equivalent with a minimum practical experience of 8 years in the concerned Laboratory of an Engineering College/Institute.Note: Candidates with the knowledge of computers will be preferred.
8. Technical Assistant Gr.I (Remote Sensing) Rs.2600-5580 (RPS'93)	Diploma in Civil Engineering (LCE) from the State Board of Technical Education, A.P., Hyderabad or its equivalent + two years relevant experience in Cartography with reference to Remote Sensing applications.ORITI (Draughtsman-Civil) and 8-years experience in Cartography with reference to Remote Sensing Applications.Note: Candidates with the knowledge of computers will be preferred.

9. Technical Assistant Gr.II Rs.2075-4270 (RPS'93)	Must have a Degree from a recognized University and a Diploma in Computer Applications recognized by the State/Central Government plus one year experience in a Computer Centre) Department or a reputed organization.ORDiploma in Computer Engineering from the State Board of Technical Education, A.P., Hyderabad or its equivalent + one year experience in the relevant area.

4. The non-teaching staff association of the respondent-university in its meeting held on 18-07-1994, among several other issues, resolved that Technical Assistant Posts, created in G.O.Ms.No.42 dated 25-02-1993, should be filled up with the existing technical assistants creating a promotion channel to the Technical employees. They also decided to form a Joint Action Committee to pursue these issues till an amicable settlement was arrived at. However, pursuant to the advertisement issued on 11-05-1994, candidates were selected and all the 22 posts of technical assistants were filled up in December 1994 itself.

5 . Sri P.V.Sanjay Kumar, learned counsel for the petitioner, would challenge the selections made, pursuant to the advertisement dated 11-05-1994, and in appointing respondents 2 to 23 to these posts of Technical Assistants, on the following grounds:

1. Since the Registrar of the respondent-university was a member of the committee constituted to make uniform service rules for employees of all universities, the respondent ought not to have gone ahead with direct recruitment and to have filled up the posts of Technical Assistants.

2. While the advertisement provides that 22 posts of Technical

Assistants are to be filled up, the actual break up of posts to which reservation was to be provided, had not been specified.

3. In the absence of a channel of promotion being provided, employees would suffer stagnation and their morale would be adversely affected.

6. Learned counsel would place reliance on **Dr.Ms.O.Z.Hussain v. Union of India, State of Tripura and others v. K.K.Roy** and **P.V.S.V.Prasada Rao v. Andhra University.**

7 . Sri K.Ratangapani Reddy, learned standing counsel appearing on behalf of respondent-university, would question the locus of the petitioner-association to file this writ petition. Learned standing counsel would submit that no details are forthcoming, in the affidavit filed in support of the writ petition and in the documents annexed thereto, as to which of the members of the petitioner-association are aggrieved by the action of the respondent-university in not providing a channel of promotion and in not providing a detailed break up of reservations for appointment to the posts of Technical Assistant. Learned standing counsel would invoke the doctrine of approbate and reprobate to submit that since the members of the petitioner-association had submitted their applications pursuant to the advertisement dated 11-05-1994 and had participated in the selection process, it was not open for them to turn around and question the action of the respondents in not providing a channel of promotion, merely because they were unsuccessful in the selection process. Learned standing counsel would submit that while all the 22 posts of Technical Assistants were filled up by December 1994 itself, the present writ petition came to be filed more than four months thereafter in April, 1995. Learned standing counsel would submit that with a view to ameliorate the grievances of

the Technical Assistants, they were given stagnation increments on completion of 10 and 15 years of service respectively. Learned standing counsel would submit that it is for the Government, pursuant to the recommendations made by the committee, to frame uniform service rules for employees of all the universities in the State and since the petitioner herein had not even chosen to implead the Government as a respondent in the writ petition, no relief as sought for could be granted. Learned standing counsel would further submit that, inasmuch as respondents 2 to 23 were selected and appointed in December, 1994 and they have been working with the respondent-university for more than 11 years, it would neither be just nor equitable to set aside their appointments after such a long lapse of time, that too at the behest of the petitioner-association, whose members, having participated in the selection process, were unsuccessful. Learned standing counsel would contend that among several members of the petitioner-association, who had applied pursuant to the advertisement, since only two satisfied the prescribed qualifications, they were selected and appointed as Technical Assistants and as the others did not possess the requisite qualifications, they were not selected. Learned standing counsel would further submit that inasmuch as all Technical Assistants constitute one single homogenous class and as several of the departments had only one post of Technical Assistant, the question of providing department-wise break up of reservation did not arise. Learned standing counsel would rely on **P.V.S.V.Prasada Rao**[3] in this regard.

8. Both Sri D.V.Sitarama Murthy and Sri K.Raghuveer Reddy, learned counsel appearing on behalf of respondents 2 to 23 herein, would, in addition to adopting the submissions made by Sri K.Ratangapani Reddy, learned standing counsel for the university, also submit that since members of the petitioner-association were not qualified for appointment and since respondents 2 to 23

had the requisite qualifications, they were appointed as Technical Assistants and since they have been working for more than 11 years, their appointments should not be interfered with at the behest of persons, who were found not suitable for selection.

9. While it is true that the affidavit filed in support of the writ petition and the documents annexed thereto does not contain particulars of the members of the petitioner-association who are directly aggrieved by the selection and appointment of respondents 2 to 23 as Technical Assistants, in not providing a channel of promotion and in not giving a department-wise break up of reserved posts, I do not propose to non-suit the petitioner on this ground. The petitioner is a registered body espousing the cause of the non-teaching staff of the respondent-university. A perusal of the copy of the resolution and the minutes of the meeting of the association filed as part of the material papers, would indicate that the petitioner has been authorized by the non-teaching staff of the respondent-university to espouse their cause. Since the writ petition was filed seeking a direction to provide a channel of promotion to technical assistants, and since the petitioner has been authorized to espouse their cause, they have the *locus standi* to file the present writ petition.

10. Next the question of failure by the respondents to provide a channel of promotion to technical assistants.

11. In **Council of Scientific and Industrial Research v. K.G.S.Bhatt**, the Supreme Court held thus:

> *"……It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a*

requirement for progress of any organisation. It is an incentive for personnel development as well. (See: Principles of Personnel Management by Flipo Edwin. B.4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay -a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.", (See: Personnel Management by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions……"

12. In **Dr.Ms.O.Z.Hussain[1],** the Supreme Court held thus:

"……This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why. while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage, In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate……"

13. In **State of Tripura[2]**, the Supreme Court held thus:

"……It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant

being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue of promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India, Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the Appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principle……"

14. Promotion is a necessary incident of service and providing an opportunity for career advancement is not only an incentive for personal development but is essential for the progress of the organization itself. Creation of promotional avenues increases efficiency in public service while stagnation makes the service ineffective. It is therefore imperative for instrumentalities of the state, such as the respondent-university, to create adequate promotional avenues for the career growth of its employees and for their advancement. While the submission of Sri K.Ratangapani Reddy, learned Standing Counsel, that the committee constituted by the Government in G.O.P.No.349 dated 01-10-1993 has submitted its report to the Government and that the Government

has yet to take a decision in this regard is not without merit, the university would do well to remind itself of the powers conferred on it under the Jawaharlal Nehru Technological University Act, 1972 (for brevity 'the Act') and the First Statutes made thereunder.

15. Under Section 10 (i) of the Act, the Executive Council is one of the authorities of the university. Under Section 12 (1) (ii) of the Act, the Executive Council shall exercise and perform the powers of creating posts and appointing teachers and other employees of the university in the manner prescribed. Section 2 (h) of the Act defines 'prescribed' to mean prescribed by statutes, ordinances or regulations of the university made under the Act. Thus the power to create posts and appoint other employees of the university is to be prescribed by way of statutes. Statute-XIV of the First Statutes of the university relates to the service of the university and thereunder members of staff of the university are classified under academic service, administrative service, ministerial service, subordinate service (technical and non-technical) and last grade service. While Statute 12 (1) relates to appointments in academic and administrative services, Statute 12 (2) relates to appointment in respect of other services of the university and since the post of Technical Assistant does not fall either under academic or administrative service, it must necessarily fall under other services of the university. Under statute 12 (2) appointments are to be made by open competition and also by promotion. Since a discretion is conferred under statute 12 (2) to make appointments either by promotion or by open competition, the manner of its exercise could, on occasions, lead to arbitrariness. It is therefore, imperative that the university exercises its powers under the Act and the Statutes and takes necessary steps for prescribing the mode and manner of recruitment, the qualifications to be prescribed in this regard and the quota, if any, to be provided for direct recruitment and by promotion. It is made clear that this Court is not issuing a mandamus to the

university to do so, for it is well settled that creation of posts is a matter of executive policy and that Courts should not, normally, issue a mandamus to the authorities concerned to create posts. Similarly, the power to make rules or statutes is a power to be exercised by the university and it is not for this Court to issue a mandamus directing the university to do so. In view of the law laid down by the Apex Court in the aforesaid judgments, the law of the land under Article 141 of the Constitution of India, it would be in the best interests of the university to ensure that necessary steps are taken in this regard at the earliest. Undue delay would undoubtedly reduce efficiency and render the service ineffective. While more than 12 years have elapsed since the recruitment under challenge was resorted to and the committee was constituted in G.O.P.No.349 dated 01-10-1993, Technical Assistants in the university still suffer stagnation in service. Monetary compensation by way of stagnation increments would not suffice. The University is required to act in accordance with the provisions of the Act under which it was constituted and the Statutes made thereunder and not abdicate its responsibility in this regard. While much more could be said, considering the self-imposed limitations of this Court under Article 226 of the Constitution of India, I refrain from doing so.

16. Now the contention relating to not providing break up of reservations department-wise. A perusal of the advertisement dated 11-05-1994 would reveal that as against 22 posts of Technical Assistants while 12 posts were to be filled up by open competition, 3 were reserved in favour of the Schedule Castes, 2 in favour of the Schedule Tribes, 2 in favour of BC-A, one in favour of BC-B, one in favour of BC-C and one in favour of BC-D. The grievance of the petitioner is that while these 22 posts are spread over 13 Engineering Departments, the break up of reservation department-wise is not specified in the advertisement leaving it to the whims and fancies of the universities to

choose as to in which department reservation is to be provided. While the submission of Sri K.Ratangapani Reddy, learned standing counsel for the respondent, that in certain departments, only one post of Technical Assistant is available and that there can be no reservation in a single post, cannot be said to be without merit, it is not clear as to whether the single post in certain departments, as specified in the advertisement, was the only post available in the department or only one, amongst several posts in the department, was sought to be filled up under the said advertisement. If there are other posts of Technical Assistants, in the said departments, which have already been filled up and which are not made available to be filled up under the impugned advertisement, this principle of no reservation in a single post would have no application. Be that as it may, the fact remains that even in respect of other departments, where there are more than one post, the advertisement does not give a break up of reservation department-wise. The submission of Sri K.Ratangapani Reddy, learned standing counsel for respondent, is that all Technical Assistants of the university constitute one single homogenous class and as such it is wholly unnecessary for the university to provide for a departmental-wise break up. Since the learned standing counsel places reliance on the judgment of a Full Bench of this Court in **P.V.S.V.Prasada Rao[3],** it is necessary to examine as to what has been laid down by the Full Bench in the said judgment. The Full Bench held that if the method adopted by the university in classifying posts into a group/groups, or class/classes, the same could not be said to be arbitrary or discriminatory, that while providing Rule of Reservation, the university must ensure fairness and transparency in the recruitment process, that if reservation is to be effected with reference to statutory roster, there is lesser likelihood of injustice because the aspiring candidates would know whether there is a post or posts in the department/faculty/group in which such candidate desires to compete for the

post, and while giving the notification, the university should indicate to which of the posts and in which of the department/faculty reservation is provided. While grouping of departments was held to be in order, the Full Bench faulted the university in not giving the break up of reservation department-wise and held at paragraph 84 as under:

> *"……This method adopted by the University certainly goes against the principles laid down in University of Chochin v. Dr. N. Raman Nair*
> *(4 supra-1975 (1) SLR 20 (SC)) as well as Suresh Chandra Verma v. Chancelllor, Nagpur University (3 supra-AIR 1990 SC 2023). This method would certainly result in anomalies or incongruities pointed out by the Supreme Court in Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra). Neither the candidates nor the selection committees were aware of the reservations with reference to the particular subject in each group. This would certainly give a larger scope for a Vice-Chancellor who has a pivotal role at every stage of selections to manipulate the vacancy position at the time of appointments. For instance, depending on the whims and fancies, the Vice-Chancellor may order a particular SC vacancy to be filled up in a particular department though in comparison with other departments, the backlog of SC vacancies in another department may be more or the need may be more felt. This method would certainly deprive a qualified candidate of appointment in that subject from which the reserved vacancy was shifted to other department by the authorities. The procedure adopted by the University in not determining the subjectwise reservation posts at pre-notification stage and not advertising the posts subjectwise would certainly negate equal opportunity to all the aspiring candidates. The procedure certainly lacks transparency and whenever there is lack of transparency in discharge of public functions, the exercise by public authorities would be arbitrary and capricious. What do we mean by transparency in public administration or constitutional governance?……"*

17. The submission of Sri K.Ratangapani Reddy, learned standing counsel, that all the Technical Assistants constitute one homogeneous class

also needs examination. A perusal of the annexure to the advertisement would reveal that the Technical Assistants Grade-I form nine different categories, department or subject wise, and while the qualification prescribed is a degree and diploma or an ITI for different categories of Technical Assistants Grade-I, the subject in which the diploma is to be obtained is different. Since the posts of Technical Assistant Grade-I, under the impugned advertisement itself, is separately categorized into 9 different groups with distinct qualifications prescribed for each of the nine categories, I am unable to accept the submission that Technical Assistants Grade-I constitute one single homogenous class. In view of the law laid down by the Full Bench of this Court in **P.V.S.V.Prasada Rao[3],** the respondent-university ought to have provided reservation department-wise. It is true, as contended by the learned standing counsel, that the petitioners had not stated as to which of its members are aggrieved by failure of the university in providing break up of reservation department-wise. I am, however, not inclined to take a hyper technical view of the matter, since matters relating to reservations are of public importance and Universities must ensure strict adherence to the rules of reservation.

18. The next question which arises for consideration is as to whether failure of the university to provide a break up of reservation department-wise and specify details thereof in the advertisement would result in the appointment of respondents 2 to 23 herein being set aside. It is to be noted that the Full Bench of this Court in **P.V.S.V.Prasada Rao[3],** while faulting the university in not providing department-wise break up of reservation, had however, chosen not to interfere with the selection and the consequent appointment of the selected candidates in view of he long lapse of time from the date on which they were appointed. In this case also respondents 2 to 23 were appointed more than 11 years ago in December 1994 and at this length of time, it would

be wholly inappropriate to set side their selections and orders of appointments. Appointments of respondents 2 to 23 should not be interfered on another ground also. The members of the petitioner-association, as rightly pointed out by Sri Ratangapani Reddy, learned standing counsel for the university, had participated in the selection process and have chosen to file this writ petition in April 1995, four months after respondents 2 to 23 were appointed, and the members of the petitioner-association were found not fit for selection I do not see any reason therefore, to set aside appointments of respondents 2 to 23 at the instance of members of the petitioner-association who, having chosen to participate in the selection process and on their not being selected, have turned around and have chosen to challenge, the very same advertisement, four months after respondents 2 to 23 were appointed as Technical Assistants in the University.

19. The writ petition is accordingly disposed of. However, in the circumstances, without costs.

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23rd March, 2006

SKM

L.R.Copy to be marked: No